Charleston Area Medical Center Deferred Profit Sharing Plan (the Plan); Located in Charleston, West Virginia

[Prohibited Transaction Exemption 95–107; Exemption Application No. D–10009]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past cash sale by the Plan to the Camcare & Affiliates Malpractice Self-Insurance Trust (the Malpractice Trust) of certain publicly-traded securities, provided the following conditions were satisfied: a) the sale was a one-time transaction for cash; b) the Plan paid no commissions or other fees in connection with the transaction; and c) the transaction involved publicly-traded securities, the fair market values of which were determined by an independent bank by reference to the closing price for the securities on the New York Stock Exchange.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 25, 1995 at 60 FR 49423.

EFFECTIVE DATE: This exemption is effective November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 21st day of November, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 95–28911 Filed 11–27–95; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–09840, et al.]

Proposed Exemptions; World Omni Financial Corporation

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice To Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

World Omni Financial Corporation and its Affiliates, Located in Deerfield Beach, Florida

[Application No. D–09840]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

A. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. Effective June 27, 1994, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity shall not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. Effective June 27, 1994, the restrictions of sections 406(a), (b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided;

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by the servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.S. below.

D. Effective June 27, 1994, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poors Corporation, Moody's Investor Service,

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Inc., Duff & Phelps Inc., or Fitch Investors Service, Inc. (collectively, the Rating Agencies);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to or retained by the sponsor pursuant to the assignment of obligations (or interest therein) to the trust represents not more than the fair market value of such obligation (or interest); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933;

(7) To the extent that the pool of leases used to create a portfolio for a trust is not closed at the time of the issuance of certificates by the trust, additional leases may be added to the portfolio for a period of no more than 15 consecutive months from the cut-off date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) all such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an ''eligible lease'' (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) shall be described in the prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in additional leases are first reinvested in the ''eligible lease contract'' (as defined in Section III.X. below) with the earliest origination date, then in the ''eligible lease contract'' with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular trust, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other trusts; and

(11) The trustee of the trust is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. World Omni and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section III—Definitions

For purposes of this proposed exemption:

A. ''Certificate'' means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A. (1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this proposed exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust;[4]

[4] It is the Department's view that the definition of ''Trust'' contained in Section III.B. includes a

Continued

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section III.B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest categories by the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means any investment banking firm that has received an individual prohibited transaction exemption from the Department that provides relief for so-called ''asset-backed'' securities that is substantially similar in format and structure to this proposed exemption (the Underwriter Exemptions); [5] or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means an entity, independent of World Omni or affiliated with World Omni, that organizes a trust by depositing obligations therein in exchange for certificates provided that, if such entity is independent of World Omni, the servicer of the trust is an affiliate of World Omni.

E. ''Master Servicer'' means World Omni or an entity affiliated with World Omni that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means World Omni or an entity affiliated with World Omni which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means World Omni or an entity affiliated with World Omni which services leases contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means an entity that is independent of World Omni and its affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments, ''trustee'' also means the trustee of the indenture trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust. In addition, a person is not an insurer if such person merely provides: (1) Property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments for a lease in the trust. For any qualified motor vehicle leases contained in a trust as described herein, ''obligor'' shall include any owner of property subject to a lease included in the trust, or subject to a lease securing an obligation in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust and at the end of the period described in Section II.A.(7); or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person shall be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption applicable to sales are met.

Q. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory

two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[5] For a current listing of the Underwriter Exemptions, see Section V(h) of Prohibited Transaction Exemption (PTE) 95–60 (60 FR 35925, July 12, 1995).

contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing for the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust shall not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

V. ''Lease Rate'' means an implicit rate in each lease calculated as an annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a ''Lease Rate'', each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. ''Average Lease Rate'' means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. ''Eligible Lease'' or ''Eligible Lease Contract'' means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

The Department notes that this proposed exemption, if granted, will be included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the Federal Register on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This proposed exemption, if granted, will be effective for all transactions described herein which occurred on or after June 27, 1994.

Summary of Facts and Representations

1. World Omni Financial Corporation (World Omni) is a Florida corporation which is a wholly-owned subsidiary of J.M. Family Enterprises, Inc. (JMFE). JMFE also owns Southeast Toyota Distributors, Inc., which is the exclusive distributor of Toyota cars and light duty trucks in Alabama, Florida, Georgia, North Carolina and South Carolina (the Five-State Area). World Omni provides consumer lease and installment contract financing to retail customers of, and floorplan financing to, automobile and light-duty truck dealers located primarily in the Five-State Area.

World Omni Lease Securitization L.P. is a Delaware limited partnership, the sole general partner of which is World Omni Lease Securitization, Inc., a Delaware corporation that is a wholly-owned subsidiary of World Omni, and the sole limited partner of which is World Omni.

Auto Lease Finance L.P. is a Delaware limited partnership, the sole general partner of which is Auto Lease Finance, Inc., a Delaware corporation that is a wholly-owned subsidiary of World Omni, and the sole limited partner of which is World Omni.

2. World Omni and its Affiliates, including World Omni Lease Securitization, L.P., and Auto Lease Finance L.P., seek an exemption to permit employee benefit plans to invest in certificates indirectly representing undivided interests in a trust which contains motor vehicle leases and the motor vehicles related to those leases. The exemption World Omni seeks is substantially similar to the Underwriter Exemptions granted by the Department to various broker-dealers and banks to permit investments in, among other things, motor vehicle receivable investment trusts. In the exemption sought by World Omni, the primary asset of the trust in which investors have beneficial interests (i.e. the Securitization Trust) is a special unit of beneficial interest (SUBI) in a separate trust that actually holds the motor vehicle leases and related motor vehicles (i.e. the Origination Trust). The Underwriter Exemptions may also include such a two-tier trust structure (as noted above in Footnote 5). However, unlike the trusts described in the Underwriter Exemptions, the Origination Trusts established by World Omni do not contain fixed pools of assets (i.e. qualified motor vehicle leases and related motor vehicles) for at least a year, as discussed further below. World Omni states that the Securitization Trusts meet all other requirements of the Underwriter Exemptions. Such requirements include: (i) That investor certificates covered by the exemption have one of the three highest ratings from the Rating Agencies; (ii) that there be no subordination of investor certificates purchased by employee benefit plans to the rights and interests evidenced by other certificates of the same trust; and (iii) that there be a pass-through of principal, interest and other payments received by the trust relating to the receivables beneficially owned by the trust, less certain specified servicing fees which are disclosed and approved by the investors prior to the acquisition of any trust certificates.

3. The Origination Trust is formed pursuant to a trust agreement between the sponsor of the Origination Trust and its trustee (the Origination Trustee). The sponsor of the Origination Trust is generally a wholly-owned subsidiary of World Omni (or a limited partnership in which such a wholly-owned subsidiary is the sole general partner), but could be an entity independent of World Omni and its affiliates. The Origination Trustee is a wholly-owned subsidiary of an independent entity qualified to provide trust services, and in fact

provides such services to the Origination Trust under contract with its subsidiary (i.e. the Trust Agent). Currently, the Trust Agent is Bank of America Illinois (Bank of America). Bank of America is not affiliated in any way with World Omni, other than as a service provider. World Omni or an affiliate acts as servicer (the Servicer) for all of the leases and leased vehicles owned by the Origination Trust, pursuant to a servicing agreement with the Origination Trustee (the Servicing Agreement).

4. The assets of the Origination Trust include retail closed-end automobile and light-duty truck lease contracts assigned to the Origination Trust by dealers in the World Omni family, the automobiles and light duty trucks relating thereto, all proceeds thereof (including any sale of such vehicles), and payments made under certain insurance policies relating to such leases or the related lessees or leased vehicles. World Omni is the initial holder of a sole beneficial interest (i.e. the ''Undivided Trust Interest'' or ''UTI'') in the Origination Trust.

The Origination Trusts are open-ended; that is, as leases are originated, they and the related vehicles are assigned to the Origination Trust by World Omni. When the aggregate dollar amount of leases and leased vehicles in the Origination Trust grows large enough to justify a securitization, World Omni, as holder of the UTI, may direct the trustee of the Origination Trust to segregate from among all the leases and leased vehicles within the Origination Trust a specified portfolio of leases and related leased vehicles. The trustee then issues to World Omni a separate certificate representing a ''Separate Unit of Beneficial Interest'' or ''SUBI'' in that segregated portfolio. It is this SUBI that becomes the basis for a securitization and the creation of a separate Securitization Trust.

Any leases and leased vehicles held by the Origination Trust that are not included in a SUBI portfolio at the time of such segregation, as well as any new leases and related vehicles acquired subsequent to the ''cut-off date'' on which the new SUBI portfolio is identified, remain part of the UTI portfolio, and the original UTI continues to represent a beneficial interest therein.

New leases and related leased vehicles are added to the SUBI's segregated portfolio by World Omni in an aggregate amount approximately equal to principal collections on the leases and leased vehicles already allocated to the SUBI,[6] for a fixed period (which will be no more than fifteen consecutive months) after the cut-off date used for the initial allocation of leases made to create the SUBI. (This period is referred to hereafter as the ''revolving period''). The applicant represents that this fixed ''revolving period'' for principal collections on the leases and leased vehicles is established so that the investor certificates issued by the Securitization Trust are treated as debt for Federal and state income tax purposes, but does not affect the characterization of those certificates as beneficial interests in the Securitization Trust property for accounting and other state law purposes.

After the ''revolving period'', the pool of leases and leased vehicles allocated to the SUBI (i.e. the SUBI portfolio) remains fixed. Any leases which are added to the SUBI portfolio during the ''revolving period'' must meet the same terms and conditions for eligibility as the original leases in the portfolio, as described in the prospectus or private placement memorandum, which terms and conditions have been approved by the Rating Agencies prior to the ''revolving period''. However, World Omni states that the terms and conditions for an ''eligible lease'' (as defined in Section III.X above) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies. Further, under the conditions of the proposed exemption, World Omni must ensure that the additional leases added to the SUBI portfolio do not result in the certificates receiving a lower credit rating from the Rating Agencies at the end of the ''revolving period'' than the rating that was obtained at the time of the initial issuance of the certificates by the trust (see Section II.A.(7)(b) above).

World Omni states that for the duration of the ''revolving period'', principal collections that are reinvested in additional leases are first reinvested in the ''eligible lease contract'' (as defined in Section III.X. above) with the earliest origination date, then in the ''eligible lease contract'' with the next earliest origination date, and so forth (i.e. on a ''FIFO basis), beginning with any lease contracts that have been reserved by World Omni specifically for such purposes at the time of the initial allocation of leases to the particular SUBI portfolio. However, those lease contracts reserved for allocation to, or actually allocated to, other pools of leases (i.e. other SUBI portfolios used to create different trusts) will be excluded from the available additional leases to be added to the particular SUBI portfolio. World Omni states that no adverse selection procedures may be employed in selecting leases during the ''revolving period''. Thus, World Omni represents that it will not be able to manipulate the order in which leases are added to a particular SUBI portfolio during the ''revolving period'' in order to improve its economic position with respect to the assets held in a particular SUBI portfolio. World Omni states further that at all times there will be a clear identification within the Origination Trust of which leases and leased vehicles belong in each SUBI portfolio and which belong in the UTI or ''residual'' portfolio. The holders of beneficial interests in each SUBI have also agreed in writing to rely solely upon the assets contained within their respective portfolios to satisfy any payment obligations.

This ''revolving period'' arrangement differs from the Underwriter Exemptions wherein each trust contains a ''fixed pool'' of assets and substitution of receivables by the trust sponsor is permitted only in the event of defects in documentation discovered within a limited time after the issuance of trust certificates. The applicant states that in the present case, during the ''revolving period'', the outstanding principal balance of the SUBI's portfolio of leases remains unchanged and the certificateholders receive only interest payments with respect to their certificates. Once the ''revolving period'' ends, principal payments are no longer reinvested but rather are paid out to certificateholders.

To the extent that leases added to the SUBI portfolio during the ''revolving period'' have a higher Lease Rate (as defined in Section III.V. above) than do the original leases in the SUBI portfolio at the time of the initial offering of the certificates to investors, total returns on the ultimate lease pool in excess of that promised to investors on the trust certificates may inure to affiliates of the Servicer. However, the applicant states

[6] World Omni represents that the aggregate amount of new leases added to a SUBI portfolio is approximately equal, rather than exactly equal, to principal collections on the existing leases because, when additional leases are added, the outstanding principal balance of the new leases is not always equal to the principal collections available for reinvestment. The uninvested principal amounts are held by the Securitization Trust in a cash account and temporarily invested in short-term investments, with interest thereon accruing to the Securitization Trust, until such amounts can be reinvested in additional leases for the SUBI portfolio. World Omni states that any uninvested principal amounts, and interest on such amounts, held by the Securitization Trust are distributed to the certificateholders once principal payments on the leases in the SUBI portfolio are passed-through to investors.

that the Average Lease Rate (as defined in Section III.W. above) for the pool of leases allocated to a SUBI portfolio owned by a particular Securitization Trust, after accounting for all the leases added to the SUBI portfolio during the ''revolving period'', shall not be more than 200 basis points (i.e. 2 percent) greater than the Average Lease Rate for the leases in the SUBI portfolio on the cut-off date used for the initial allocation of leases to the SUBI portfolio owned by the Securitization Trust.

The Average Lease Rate for the leases in the trust at the time of the initial offering of the certificates is described in the prospectus or offering memorandum provided to investors. The applicant represents that changes to the Average Lease Rate based on new leases added to a trust during the ''revolving period'' depend on current interest rates and market conditions as well as the amount of lessee prepayments and repossessions on the leased vehicles. Thus, potential plan investors at the time of the initial offering of trust certificates know the total dollar amount of leases in the trust, the Average Lease Rate on those leases, the fact that principal received by the trust during the ''revolving period'' is used to invest in additional leases, and the length of the ''revolving period''. Under the terms of the proposed exemption, potential plan investors shall also be provided with a statement disclosing the fact that the relief provided by the exemption shall be available to the Servicer and its affiliates only if the additional leases do not cause the Average Lease Rate for the leases in the pool after the ''revolving period'' to increase by more than 200 basis points.

5. Pursuant to a supplement to the Origination Trust Agreement and a supplement to the Servicing Agreement, World Omni, acting as Servicer on behalf of the Origination Trustee, selects the assets to be represented by each SUBI (as discussed above). Certificates representing the entire beneficial interest in each SUBI are issued to the sponsor of the Securitization Trust. The sponsor is usually a wholly-owned subsidiary of World Omni (or a partnership in which such a subsidiary is the sole general partner), but in some cases could be an entity that is independent of World Omni and its affiliates provided that World Omni or an affiliate acts as the Servicer of the trust. The sponsor creates the Securitization Trust and transfers a certificate representing approximately a 99.8 percent beneficial interest in the SUBI to the Securitization Trust, pursuant to a trust agreement between the sponsor and the trustee of the Securitization Trust (the Securitization Trustee).[7] The Securitization Trustee is an unrelated commercial institution with trust powers, meeting certain specified requirements. Currently, the trustee of the Securitization Trusts is the Bank of America. In addition, pursuant to the Securitization Trust agreement, the Securitization Trust issues to its sponsor investor certificates representing fractional undivided interests in the assets of the Securitization Trust (i.e. the 99.8 percent interest in the SUBI, which itself represents a beneficial interest in a portfolio of motor vehicle leases and related leased motor vehicles held by the Origination Trust).

6. The sponsor of the Securitization Trust sells approximately 96 percent of the certificates to various outside investors, including employee benefit plans subject to the Act. World Omni retains a subordinated interest in the Securitization Trust of approximately 4 percent, as required by the Rating Agencies, so that unanticipated losses with the SUBI portfolio will first by borne by World Omni. With respect to the certificates sold to outside investors, there may be two or more classes of securities. The investor certificates are either publicly or privately offered. In the public lease securitizations completed by World Omni thus far, approximately 92.5 percent of the certificates were sold to investors publicly and approximately 3.5 percent of the certificates were sold to investors privately. The public investor certificates had a AAA/Aaa rating from the Rating Agencies. The private investor certificates had a single ''A'' rating from the Rating Agencies because such certificates were subordinated to the public investor certificates.[8] Except under rare circumstances, physical certificates are not issued to investors in a public senior class of certificates. Instead, the Securitization Trust uses a book entry registration system through the Depository Trust Company (DTC), a limited-purpose trust company organized under New York law, which is a member of the Federal Reserve system, and a clearing agency under Section 17A of the Securities Exchange Act of 1934.

Investors are entitled to receive monthly payments of interest at a fixed certificate rate, and after the ''revolving period'' described above, payments of principal. Principal payments are based on the decline in the value of the pool of leases and vehicles allocated to each SUBI, based on certain standard depreciation schedules for the related motor vehicles. All net collections collected for the assets underlying each SUBI, including all net proceeds from the sale of a vehicle upon repossession, early lease termination or maturity of the related lease, are available to make payments on the investor certificates.

The price of the investor certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand and the Average Lease Rate for the leases allocated to the particular SUBI. The applicant states that the Average Lease Rate generally is determined by the same market forces that determine the price of the investor certificates. Certificate interest rates are set at the time of the pricing of each securitization. While the Average Lease Rate for the particular lease portfolio is a factor in the interest rates a Securitization Trust will be able to pay, the actual interest rate set for the certificates issued is determined by a combination of additional factors. Specifically, these factors include: (a) the then-current yields on U.S. Treasury Notes with a remaining term equivalent to the anticipated average life of the particular Securitization Trust, and (b) the then-current ''spreads'' on similarly-rated competitive investments available in the marketplace, as determined by

[7] World Omni or an affiliate retains a de minimis interest in each SUBI portfolio which represents a subordinated interest in the portfolio, under requirements established by the Rating Agencies, in order to meet certain Federal tax code objectives.

[8] The applicant is not requesting an exemption for the purchase of any subordinated class of certificates by employee benefit plans. However, the applicant is requesting relief for prohibited transactions that may occur as a result of the investments in a trust made by an insurance company's general account which are considered to be ''plan assets'' under the recent U.S. Supreme Court decision in *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 114 S.Ct. 517 (1993) (Harris Trust). As a result of the decision in Harris Trust and the Department's plan assets regulation (see 29 CFR 2510.3–101), an insurance company investing general account assets could be viewed as a ''benefit plan investor'' for purposes of calculating the 25 percent significant participation test in section 2510.3– 101(f)(1) of the regulation.

The Department notes that Section III of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (PTE 95–60, 60 FR 35925, July 12, 1995) provides an exemption for transactions in connection with the operation of asset pool investment trusts notwithstanding that the certificates acquired by the general account are subordinated to the rights and interests evidenced by other certificates of the same trust. In this regard, the Department has included a paragraph at the end of the operative language of the proposed exemption which states that this exemption, if granted, will be included within the definition of the term ''Underwriter Exemption'' under Section V(h) of PTE 95–60. Therefore, the exemptive relief provided by PTE 95–60 will be available for subordinated investments in a trust described herein by insurance company general accounts.

the Rating Agencies. Once the certificate rate is set for the certificates issued by the Securitization Trust, that rate remains fixed for its duration, regardless of any changes to the Average Lease Rate of the SUBI portfolio occurring during the ''revolving period''. The price of an investor certificate and the certificate rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the certificate rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

7. The origination of the leases held by the Origination Trust begins with World Omni, which enters into arrangements with its network of dealers allowing it to cause the assignment of leases and related vehicles originated by those dealers either directly to World Omni or to any other specified entity, including the Origination Trust. Once assigned to the Origination Trust for ultimate inclusion in a portfolio of SUBI assets for securitization as described above, this mechanism enables World Omni to go to the capital markets directly for financing and thereby enhance its leasing capacity without outside financing.

World Omni and/or one or more wholly-owned subsidiaries of World Omni, or partnerships in which such a wholly-owned subsidiary is the sole general partner, are responsible for creating each SUBI, creating the Origination Trust and each Securitization Trust, and designating the Trust Agent and the Securitization Trustee.

The Trust Agent, its subsidiary the Origination Trustee, and the Securitization Trustee, are each independent entities, unrelated to World Omni, the underwriter or placement agent. The Origination Trustee is the legal owner of the motor vehicle leases and related leased motor vehicles allocated to a SUBI. The Securitization Trustee is the legal owner of the obligations in the Securitization Trust and is responsible for enforcing all the rights created thereby in favor of certificateholders, whether independently or through the Origination Trustee. The applicant represents that each Securitization Trustee and Trust Agent are substantial financial institutions or trust companies experienced in trust activities. The Trust Agent and Securitization Trustee receive a fee for their services, which is paid out of assets of the Origination Trust or the Securitization Trust, as applicable. The method of compensating each for its service related to a SUBI is specified in the Origination Trust Agreement or Securitization Trust Agreement, as applicable, and disclosed in the prospectus or private placement memorandum relating to the offering of the investor certificates.

8. The Servicer administers the leases on behalf of the beneficial owners of the Origination Trust, including the holders of SUBI certificates and, indirectly, the holders of the investor certificates. The Servicer's functions involve monitoring of leases, maintenance of records, institution of proceedings in the event of default, and sale of vehicles after lease maturity, as well as certain functions relating to the qualifications and permits required to be obtained by the Origination Trustee.[9] The Servicer, the sponsor of the Origination Trust, and the sponsor of the Securitization Trust are unrelated to the underwriter and to DTC. DTC has public senior investor certificates registered in its name (or that of its nominee) and maintains procedures for the distribution of notices, reports, distributions and statements to certificateholders.

As compensation for performing its servicing duties for the Origination Trust, the Servicer is paid a fee equal to a specified percentage (usually no more than one percent) of the balance of the leases it services, including those leases allocated to the SUBI. The Servicer may receive additional compensation related to the SUBI in the form of interest on various accounts of the Origination Trust and/or the Securitization Trust containing proceeds of the leases and related leased motor vehicles allocated to each SUBI as well as interest on certain cash deposits. The Servicer is required to pay the administrative expenses of servicing the Origination Trust out of its servicing compensation.

The Servicer is also compensated to the extent it may provide credit enhancement to the Securitization Trust or otherwise arranges to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and may be either paid out of the income received on the leases in excess of the certificate rate or paid in a lump sum at the time the Securitization Trust is established. The Servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor under a lease, provided that such fees are ''qualified administrative fees'' as defined under Section III.S. These administrative fees fall into three categories: (a) prepayment processing fees; (b) late payment fees; and (c) fees and charges associated with the purchase of a leased vehicle by an obligor as well as any repossession of such vehicle, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Payments on leases may be made by lessees to the Servicer at various times during the period preceding any date on which payments to the Origination Trust are due. In some cases, the Servicing Agreement may permit the Servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the Servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a lease and the date payment is due to the Origination Trust. Commingled payments may not be protected from the creditors of the Servicer in the event of the Servicer's bankruptcy or receivership. In those instances when payments on leases are held in non-interest bearing accounts or are commingled with the Servicer's own funds, the Servicer is required to deposit these payments into an Origination Trust account by a date specified in the Servicing Agreement.

All compensation payable to the Servicer with regard to the leases allocated to a SUBI is set forth or referred to in the Servicing Agreement, and described in reasonable detail in the prospectus or private placement memorandum relating to the investor certificates.

9. Participating underwriters or placement agents receive a fee in connection with the securities underwriting or private placement of investor certificates. In a firm commitment underwriting, this fee would consist of the difference between what such underwriter receives for the certificates that it distributes and what it pays the sponsor of the Securitization Trust for those certificates.[10] In a private placement, the fee normally takes the form of an agency commission paid by the sponsor of the Securitization Trust.

The arrangements among underwriters typically are set forth in an ''Agreement Among Underwriters'', which gives the managing underwriter, as lead manager of the offer, the authority to act on behalf of all the underwriters. This agreement also

[9] World Omni states that these functions are necessary since, as noted in Paragraph 4 above, the Origination Trust is the owner of, and holds title to, the vehicle unless the lessee chooses to purchase such vehicle under the terms of the lease.

[10] World Omni represents that a ''best efforts'' underwriting would not ordinarily be used for the investor certificates because of their high credit ratings.

imposes customary restrictions on the underwriters' dealings in the offered securities as are necessary to comply with securities laws and to ensure the orderly distribution of the offered securities.

10. The applicant represents that as the principal amount of the leases allocated to a SUBI is reduced by payments thereon and recoveries on the disposition of leased vehicles, the cost of separately administering the assets allocated to that SUBI generally increases, making the servicing of those assets prohibitively expensive at some point. Consequently, the Securitization Trust Agreement generally provides that the sponsor of the Securitization Trust may repurchase the 99 percent interest in the SUBI when the aggregate principal balance of the investor certificates is reduced to a specified percentage (usually between 5 and 10 percent) of the initial aggregate investor certificate balance. The terms of such repurchase are specified therein and are at least equal to the unpaid principal balance on the investor certificates plus accrued interest. The supplement to the Origination Trust Agreement generally provides that upon such a repurchase of the Securitization Trust's interest in the SUBI by its sponsor, the Origination Trust may repurchase the entire SUBI from the sponsor and thereby terminate the SUBI. The terms of such repurchase are specified therein and generally are at least equal to the value of the pool of leases and leased vehicles allocated to the SUBI.

11. The senior class of investor certificates must receive one of the three highest ratings available from the Rating Agencies. Insurance or other credit support is obtained by the sponsor of the Securitization Trust or the Origination Trust to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level expected to be a multiple of the worst historical net credit loss experience for leases of automobiles and light-duty trucks such as those allocated to the SUBI.

World Omni states that the Rating Agencies, before granting AAA/Aaa ratings for the publicly issued securitization certificates, review the underlying portfolio of assets securing payment to the investors to determine, among other things, if (a) The principal value of the assets is sufficiently greater than the aggregate face amount of the investor certificates as to provide protection against defaults or losses, and (b) there is a sufficient ''spread'' between the overall yield, based on the Average Lease Rate, being earned on the portfolio and the certificate rate to cover servicing costs, expenses and losses. In the case of World Omni's current public securitizations of leases, the Rating Agencies have required that (i) The face value of public investor senior certificates not exceed 92.5 percent of the principal value of the underlying assets, and (ii) the ''spread'' (after the discounting procedure described below) between the overall yield, based on the Average Lease Rate, of the SUBI portfolio and the certificate rate be approximately 200 basis points. Thus, for example, a SUBI portfolio with a principal value of $100,000,000 would support the issuance of certificates with a face value of only $92,500,000, and a certificate rate of 6 percent per annum would require an overall yield, based on the Average Lease Rate, for that SUBI portfolio of approximately 8 percent per annum. World Omni states that the Rating Agencies will always require a specific ''spread'' between the certificate rate and the overall yield for leases in the particular SUBI portfolio before providing their initial credit ratings for the certificates. World Omni must maintain this ''spread'' when leases are added to the SUBI portfolio during the ''revolving period'' or risk a lower credit rating for the certificates (see Section II.A.(7)(b) above).

For purposes of the securitization described above, World Omni represents that each individual lease should yield a rate of return, based on the Lease Rate (as defined in Section III.V. above), which is at least equal to the certificate rate plus approximately 200 basis points. However, where the spread required by the Rating Agencies is not met as to any lease based solely on the Lease Rate, the Rating Agencies require that World Omni ''discount'' the principal value of that lease so that such lease is treated as having a ''net investment value'' less than its actual outstanding principal balance. In such instances, the lease is discounted to a level at which the actual lease charges to be collected under the lease (including expected principal payments) would yield, on a percentage basis, an overall rate of return which exceeds the certificate rate by the amount specified by the Rating Agencies. Thus, for each individual lease included in a securitization, its principal value is either: (a) Its outstanding principal balance, if its Lease Rate is equal to or greater than the ''spread'' required by the Rating Agencies; or (b) its discounted net investment value, if its Lease Rate is less than the ''spread'' so required.[11] World Omni states that the use of discounted aggregate net investment values in measuring the ratio of certificate face values to the discounted principal balance of the SUBI portfolio can only further assure that investors are paid interest and principal on their certificates on a timely basis.

12. In some cases, the Servicer may provide temporary or permanent credit support to the trust (i.e. act as an insurer). As a temporary provider of credit support, the Servicer typically would advance funds to the full extent that it determines that such advances are recoverable (a) Out of late payments by the lessees, (b) from a permanent credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. The Servicer would advance such funds in a timely manner. When the Servicer temporarily advances funds, the amount so advanced is recoverable by the Servicer out of future payments on or for leases or leased vehicles allocated to the SUBI to the extent that such amounts are not covered by the other sources described above, including payments from a permanent credit support provider.

In some cases, the Servicer may be called upon to provide permanent credit support in the form of funds to cover defaulted payments to the full extent of its obligations as insurer. When the Servicer is the provider of permanent credit support and provides its own funds to cover defaulted payments, it does so either on the initiative of the Origination Trustee or Securitization Trustee, or on its own initiative on behalf of such trustees. The applicant states that in either event the Servicer

[11] For example, if the certificate rate for a transaction were 8 percent, then, in determining the aggregate face value amount of certificates that could be issued with respect to a given SUBI portfolio, World Omni could include each lease with a Lease Rate of 10 percent or more at its current outstanding principal balance without any discounting. However, if the portfolio included individual leases each with outstanding principal balances of $20,000 and Lease Rates of only 5 percent, then World Omni would have to ''discount'' the value of each such lease for purposes of the securitization to a low enough net investment value (approximately $18,000) so that the same overall monthly lease payment for each lease would now yield a Lease Rate of 10 percent. World Omni notes that any ''discounting'' of leases added to the SUBI portfolio during the ''revolving period'' will result in more leases being added to the portfolio in order to maintain a constant outstanding principal balance during such period. Thus, when interest rates used to determine the Lease Rate for leases added to a SUBI portfolio are declining, the ''discounting'' of leases adds more ''collateral'' to secure payments of the certificate rate.

provides such funds to cover payments to the full extent of its obligations under the credit support mechanism. If the Servicer fails to advance funds, fails to call upon a credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the Securitization Trustee would be required to enforce the investor certificateholders' rights, in its capacity as a third-party beneficiary of the Servicing Agreement, as owner of the estate of the Securitization Trust, and as an indirect beneficial owner of the Origination Trust assets allocated to a SUBI (including rights under any credit support mechanism). Therefore, the Securitization Trustee, who is independent of the Servicer, ultimately has the right to enforce any credit support arrangement.

13. The applicant represents that there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the leases allocated to a SUBI as payments for these leases and the related vehicles are used to make payments to the Securitization Trust, as holder of an interest in the SUBI, and then to investors. These safeguards include the following:

(a) There is a disincentive to postponing credit losses because the sooner repossession or sale activities are commenced, the more value generally will be realized on the leased vehicle.

(b) The Servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which a lessee's obligations ordinarily are deemed uncollectible. The Servicing Agreement requires the Servicer to follow its normal servicing guidelines. In addition, a supplement to the Servicing Agreement sets forth the Servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible.

(c) As frequently as payments are due on the investor certificates (monthly, quarterly or semi-annually, as set forth in the Securitization Trust Agreement), the Servicer is required to report to the Securitization Trustee the amount of all past-due payments and the amount of all Servicer advances, along with other current information as to collections on the leases, recoveries on the related leased vehicles, and draws upon the credit support. Further, the Servicer is required to deliver to the trustee annually a certificate from an executive officer of the Servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the Servicer has fulfilled all of its obligations under the Servicing Agreement or, if the Servicer has defaulted under any of its obligations, specifying any such default. The Servicer's reports are reviewed at least annually by independent accountants to ensure that the Servicer is following its normal servicing standards and that the reports conform to the Servicer's internal account records. The results of the independent accountants' review are delivered to the Securitization Trustee.

(d) In cases where the Servicer and an insurer providing credit support are affiliated or are the same entity, the credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the SUBI, whether due to Servicer advances or any other cause. The floor amount may be a fixed dollar amount or a multiple of the balance of one or more of the largest obligations outstanding. Once the floor amount has been reached, the Servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws on such amount. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the principal balance of the leases allocated to the SUBI. The applicant states that where the floor is a fixed dollar amount, the amount of credit support ordinarily would increase as a percentage of the principal balance during the period that the floor is in effect.

14. In connection with the original issuance of investor certificates, a prospectus or private placement memorandum is furnished to investing plans. The prospectus or private placement memorandum contains information material to a plan fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the Origination Trust and Securitization Trust as legal entities and a description of how they were formed by their respective sponsors;

(c) Identification of the Trust Agent, Origination Trustee and Securitization Trustee;

(d) A description of the leases and related leased vehicles allocated to each SUBI, including the diversification of the leases and vehicles, the principal terms of the leases, and their material legal aspects;

(e) A description of the sponsors of the Origination Trust and the Securitization Trust, and of the Servicer;

(f) A description of the servicing arrangements set forth in the Servicing Agreement, and the agreements governing the Origination Trust and the Securitization Trust, including a description of the Servicer's principal representations and warranties as to the leases and leased vehicles allocated to each SUBI and the remedies for any breach thereof;

(g) A description of the procedures for collection of payments on or for leases and related leased vehicles and for making distributions to the Securitization Trust, as holder of an interest in the SUBI, and then to investor certificateholders, and a description of the accounts into which such payments are deposited and from which such distributions are made;

(h) Identification of the servicing compensation and any fees for credit support that are deducted from payments on or for leases or related leased vehicles before distributions are made to investors;

(i) A description of periodic statements provided to the Securitization Trustee, and such statements that are provided or made available to investors by the Securitization Trustee;

(j) A description of the events that constitute events of default under the Servicing Agreement and a description of the Securitization Trustee's and the investors' remedies;

(k) A description of any credit support;

(l) A general discussion of the principal Federal income tax consequences of the purchase, ownership and disposition of the investor certificates by a typical investor;

(m) A description of the underwriters' plan for distributing the certificates to investors; and

(n) Information about the scope and nature of the secondary market for the certificates.

Reports indicating the amount of payments of principal and interest are provided to investors at least as frequently as distributions are made to investors. Investors are also provided with periodic information statements setting forth material information concerning the leases and related vehicles allocated to each SUBI, including information as to the amount and number of delinquent and defaulted leases.

15. In the case of the offer and sale of investor certificates in a registered public offering, the Securitization Trustee, the Servicer or the sponsor of the Securitization Trust will file periodic reports as required by the Securities Exchange Act of 1934 (the 1934 Act). Although some trusts that offer certificates in a public offering file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained or available for the Securitization Trust, it normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the Securitization Trust and the investor certificates. World Omni states that while the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning the Securitization Trust shall be filed to the extent required under the 1934 Act.

At the time distributions are made to certificateholders, a report is delivered to the trustee as to the status of the Securitization Trust and each SUBI, including the assets allocated to the SUBI. Such report contains information regarding, among other things, the leases and related vehicles allocated to the SUBI, payments received or collected by the Servicer, the amount of prepayments, delinquencies, Servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the Servicer. Such report is also delivered to or made available to the Rating Agency or Agencies that have rated the investor certificates. A statement based on this report is also provided to certificateholders either by the Securitization Trustee, the Servicer, or DTC as depository of the investor certificates, including a summary statement regarding the Securitization Trust and the assets allocated to the SUBI. The statement contains information regarding payments and prepayments, delinquencies, the remaining amount of credit support, a breakdown of payments between principal and interest and other information concerning the leases and leased vehicles allocated to the SUBI.

With respect to payments on the certificates, World Omni states that such payments are legally obligated to be made by the Securitization Trustee to DTC, the record owner of the certificates. World Omni represents that DTC makes payments to the beneficial owners of the certificates as required by New York Stock Exchange Regulations, SEC Regulations and the rules of the U.S. Federal Reserve Board.

16. In general, it is the policy of many underwriters to make a market for securities for which they are the lead or co-managing underwriter. It is also the policy of many placement agents to facilitate sales by investors who purchase certificates if the placement agent has acted as a principal or agent in the original private placement of the certificates and if the investors request the placement agent's assistance. In this regard, the applicant states that many underwriters have made a secondary market in certificates sponsored by World Omni and its Affiliates and that the wide range of investors involved have made such certificates fairly liquid investments.[12]

17. World Omni has requested that the relief proposed herein be made retroactive to June 27, 1994, which is the date upon which World Omni states that the conditions of this proposed exemption were satisfied. World Omni does not believe that it has engaged in any prohibited transactions that would be covered by the requested exemption. However, since June 27, 1994, it is possible that some transactions may have occurred that would be prohibited. For example, because many certificates are held in street or nominee name, the applicant states that it is not always possible to identify whether the percentage interest of plans in a trust is or is not ''significant'' for purposes of the Department's ''plan asset'' regulation (see 29 CFR 2510.3–101(f)). These problems are compounded as transactions occur in the secondary market. In addition, with respect to the ''publicly-offered security'' exception contained in that regulation (29 CFR 2510.3–101(b)), the applicant states that it is difficult to determine whether each purchaser of a certificate is independent of all other purchasers. Thus, World Omni requests an exemption which would provide the relief described herein as of June 27, 1994.

18. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act because:

(a) The Securitization Trust holds an interest in a SUBI, which generally represents a ''fixed pool'' of leases and related leased vehicles, other than the obligation to reinvest principal collections on the leases and leased vehicles in additional qualifying leases and leased vehicles during a fixed ''revolving period'' of no more than 15 months.

(b) The Average Lease Rate for the leases in the portfolio used to create a trust, after accounting for all leases added to such portfolio during the ''revolving period'', will not exceed by more than 200 basis points the Average Lease Rate for the original portfolio of leases used to create the trust.

(c) Certificates in which employee benefit plans invest have been rated in one of the three highest rating categories by the Rating Agencies. Credit support is obtained to the extent necessary to attain the desired rating. In addition, leases added to a trust portfolio during the ''revolving period'' will not result in the certificates receiving a lower credit rating from the Rating Agencies, at the end of the ''revolving period'', than the rating that was obtained at the time of the initial issuance of the certificates by the trust.

(d) All transactions for which the applicant seeks exemptive relief are governed by the Origination Trust Agreement, the Servicing Agreement and any applicable supplements thereto, and the Securitization Trust Agreement. These agreements as well as the prospectus or private placement memorandum are made available to plan fiduciaries for their review prior to the plan's investment in the certificates.

(e) Exemptive relief from sections 406(b) and 407(a) of the Act for sales to employee benefit plans is substantially limited.

[12] The Department notes that on April 3, 1995, World Omni and a number of respondents involving some 55 Toyota dealers (the Toyota Dealers) entered into an agreement with the State of Florida (the Agreement) following an investigation by the State. The investigation apparently resulted from allegations by Florida consumers of unfair trade practices by various Florida dealers, including but not limited to certain Toyota Dealers. Under the terms of the Agreement, a restitution fund of up to $4.5 million (the Restitution Fund) was created for consumers in connection with certain leases originated by the Toyota Dealers from January 1, 1989 through December 31, 1994. Initial ''advance'' payments into the Restitution Fund were made by an affiliate of World Omni. However, the Toyota Dealers ultimately will be responsible for most of the restitution payments made to consumers.

World Omni and its Affiliates represent that they will abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

World Omni represents that the Agreement did not require any payment from or adjustment to any assets of a Securitization Trust and, according to the applicant, is not material to World Omni as Servicer or to any such trust.

(f) Many underwriters have made, and the applicant anticipates that such underwriters will continue to make, a secondary market in investor certificates sponsored by World Omni and its Affiliates.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan (the Hourly Plan), General Motors Retirement Program for Salaried Employes, Saturn Individual Retirement Plan for Represented Team Members and Saturn

Personal Choices Retirement Plan for Non-Represented Team Members (the Saturn Plans), and Employees' Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan; collectively, the Plans) Located in New York, New York

[Application Nos. D–09930 & D–09931]

Proposed Exemption

(a) General Exemption. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, financing, or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) or the borrowing or lending of money in connection therewith, between a party in interest and the Plans, provided that the following conditions are satisfied:

(1) The terms of the transaction are negotiated on behalf of the Plans by, or under the authority and general direction of, General Motors Investment Management Corporation (GMIMCo), as described in the summary of facts in the notice of proposed exemption, and GMIMCo makes the decision to invest the assets of the Plans in such transaction. Notwithstanding the foregoing, a transaction involving an amount of $20 million or more, which has been negotiated on behalf of a Plan by GMIMCo will not fail to meet the requirements of this section (a)(1) solely because General Motors Corporation or its designee retains the right to veto or approve such transaction;

(2) Any such party in interest is not—

(i) GMIMCo or any person directly or indirectly controlling, controlled by, or under common control with GMIMCo, any officer, director or employee of GMIMCo or any of its subsidiaries, or any partnership in which GMIMCo is a 10 percent or more (directly or indirectly in capital or profits) partner;

(ii) General Motors Corporation (GM) or any of its subsidiaries, any officer or director of GM or any of its subsidiaries;

(iii) any named fiduciary of any Plan, or any person who has discretionary authority in the selection, supervision or operation of GMIMCo or any of its officers, directors or employees;

(iv) a sponsor of any of the Plans (Plan Sponsor) or any subsidiary of a Plan Sponsor, or a ten percent or more shareholder, partner, or joint venturer of a Plan Sponsor, or any officer or director of any of them;

(v) any person who exercises discretionary authority, responsibility or control, or who provides investment advice [within the meaning of 29 CFR 2510.3–21(c)], with respect to the investment of Plan assets involved in the transaction;

(3) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of GMIMCo, the terms of the transaction are at least as favorable to the Plans as the terms generally available in arm's-length transactions between unrelated parties;

(4) GM or GMIMCo shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that: (i) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of GM and GMIMCo, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest except GM and GMIMCo shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below;

(5)(i) Except as provided in subsection (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at GM's headquarter offices, or, upon prior arrangement with GM, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan or any duly authorized employee or representative of such fiduciary, and

(C) Any participant or beneficiary of any Plan or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine GM's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific exemption.* The restrictions of sections 406(a)(1) (A) through (D) and sections 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the furnishing of services, facilities, and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of a Plan if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this exemption are met.

EFFECTIVE DATE: This exemption, if granted, will be effective as of July 1, 1994.

TEMPORARY NATURE OF THE EXEMPTION: The exemption proposed herein, if granted, will be temporary in nature and will expire on the date of publication by the Department of the final class exemption for plan asset transactions determined by in-house asset managers, which was proposed by the Department on March 24, 1995 at 60 FR 15597 (application no. D–09602).

Summary of Facts and Representations

1. The Plans are defined benefit plans sponsored by the General Motors Corporation (GM) and subsidiaries of GM. As of December 31, 1994, there were approximately 835,700 active participants in the Plans, and the Plans held assets totaling approximately $44.2 billion. Approximately 5.6 percent of the Plans' total assets is currently invested, or committed for specific investment, in real estate or real estate related investments.

2. The Plans are administered by the Finance Committee of GM's board of directors (the Finance Committee) as the

named fiduciary with respect to each of the Plans, except for the Employee's Retirement Plan for GMAC Mortgage Corporation (the GMAC Plan), discussed below. The Finance Committee, among other functions, is responsible for the direction and oversight of each Plan's investment policy, monitors each Plan's performance, and adopts broad investment policy guidelines. The Finance Committee receives assistance from an Investment Policy Committee (IPC), which periodically reviews and makes recommendations on investment policy guidelines. The IPC is comprised of officers of GM and officers of the General Motors Investment Management Corporation (GMIMCo), a wholly-owned subsidiary of GM. Further, the Finance Committee has authorized the IPC to approve all investment commitments involving more than one percent of the assets of any Plan's trust. The Finance Committee has also appointed GMIMCo to act as an investment manager with respect to the Plans. In that regard, GMIMCo is actively involved in real estate transactions undertaken by the Plans, including transactions under the direct management of third party investment managers.

The named fiduciary of the GMAC Plan is the GMAC Mortgage Corporation Pension Committee (GMAC Committee). The assets of the GMAC Plan have been commingled with the assets of the Hourly Plan and Saturn Plans for investment purposes. As a result, GMIMCo acts also as an investment manager with respect to the GMAC Plan.

Real estate transactions involving the Plans' assets may be undertaken directly by GMIMCo's real estate portfolio group (the R.E. Group) or indirectly through a third party asset manager with the R.E. Group's involvement. The R.E. Group's functions include the identification and analysis of real estate investments. The R.E. Group is comprised of six investment professionals, four attorneys and administrative personnel.

3. GM requests an exemption to allow the Plans to engage in real estate transactions which may otherwise be prohibited under the Act, as described herein. GM represents that all prospective transactions will be effected on behalf of the Plans by GMIMCo and will not involve parties in interest who have fiduciary authority over the particular investments of the Plans. GM represents that due to its size and complexity, the normal operation of the Plans with respect to their real estate investments may involve party in interest transactions. The Department recognizes this situation and, to date, has proposed and granted various individual exemptions on behalf of large plans for real estate transactions involving parties in interest who maintain no authority over the investments involved. GM is requesting similar exemptive relief.

4. GM represents that the Plans' investments in real estate are made in various forms. Such forms involve real estate partnerships, joint ventures, leases, and mortgages. As a result of such real property investment arrangements, prohibited transactions by and between a Plan and party in interest lenders, lessees, joint venturers, partnership partners, and service providers may occur. Such parties would maintain no authority with respect to the Plan assets involved in such transactions.

5. GM represents that the Plans' investments in real estate take on various forms, including limited partnerships, joint ventures, leases, mortgages, sale-leasebacks, and convertible mortgage arrangements. With respect to each investment structure, the projects in question are typically office buildings, shopping centers, hotels and other commercial or multi-family residential projects. GM represents that the owners/operators/developers with whom the Plan invests are carefully chosen and are experienced in the evaluation, ownership, management, financing and, in the case of new projects, development of real estate. Parties in interest with respect to the Plans which may become involved in these various types of real estate transactions include bank lenders, lessees, joint venturers, and partnership partners. The proposed exemption would not include transactions involving any parties in interest with any authority with respect to the Plans' investment in the subject transaction.

6. The applicant states that it is possible that the investment by the Plans in places of public accommodation may result in the use of such facilities by parties in interest. Therefore, such transactions involving these places of public accommodation may constitute prohibited transactions as described in the Act.

7. GM represents that regardless of the structure involved, each potential real estate investment on behalf of the Plans receives thorough and careful analysis by GMIMCo and by its professional staff. The investment process operates as follows: potential real estate investments are generally brought to the attention of one or more members of GMIMCo's professional staff by real estate professionals, brokers, or advisers. A staff of real estate professionals under the direction of GMIMCo's managing director then inspects and appraises prospective properties, considers existing and prospective tenants, and evaluates numerous other financial and non-financial aspects such as size, location, actual and potential use, financing, taxes, insurance, title requirements and compliance with zoning and other applicable laws. Sophisticated computer models are utilized as a tool to assist the real estate professionals and to evaluate risk and reward potential.

Upon completion of this analysis, the potential real estate investment is either rejected or approved by a manager. If the manager approves the proposed transaction, it is then presented to GMIMCo's Pension Investment Review Team (PIRT). Approval by the PIRT is final as to transactions involving $30 million or less. Transactions involving more than $30 million are referred for further consideration by the Chief Investment Funds Officer of GM, who retains the right to approve or veto such transaction. Transactions involving more than 1% of the assets of a Plan's trust are referred for further consideration to the IPC, which retains approval and veto authority with respect to such transactions. GMIMCo's investment professionals are aided in the review process by GMIMCo's in-house legal staff.

8. GM represents that by means of the arrangements described above, rigorous financial standards and procedures have been established to ensure sound real estate investments with appropriate rates of return. GM represents that any covered transactions will be on terms not less favorable to the Plans than those available between the Plan and unrelated parties. GM represents that given the size and scope of the Plans and their investment, and GM's relationship to numerous financial institutions, denial of the requested exemption would substantially inhibit the Plans from investing in many prime quality real estate projects of substantial size.

9. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) All investments will be subject to the discretion and control of GMIMCo and its professional staff, which have extensive experience in real property investments and which will conduct complete analyses with respect to potential Plan investments; (b) The Plans will be able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Plans' operation;

(c) All transactions will involve parties who are independent from GM and who have no discretion, authority or control with particular transactions; and (d) All transactions will be conducted on an arm's-length basis on terms not less favorable to the Plan than those available in arm's-length transactions with unrelated parties.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ventura County National Bancorp 401(k) and Employee Stock Ownership Plan (the Plan) Located in Oxnard, California

[Application No. D–10024]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply for the period from May 12, 1995 until June 21, 1995 (the Offering Period), to: (1) The receipt of certain stock rights (the Rights) by the Plan, which is sponsored by Ventura County National Bancorp (Ventura) and its affiliates, pursuant to a stock rights offering (the Rights Offering) by Ventura to shareholders of record of Ventura's common stock (the Employer Stock) as of May 10, 1995; (2) the holding of the Rights by the Plan during the Offering Period; and (3) the exercise of the Rights by the Plan, provided the following conditions were met:

(a) The Plan's acquisition and holding of the Rights resulted from an independent act of Ventura as a corporate entity, and all holders of the Employer Stock were treated in a like manner, including the Plan;

(b) With respect to the ''401(k) portion'' of the Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to plan provisions for individually directed investment of such accounts; and

(c) With respect to the ''ESOP portion'' of the Plan, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by an independent fiduciary which made determinations as to whether and how the Plan should exercise or sell the Rights acquired through the Rights Offering.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective for the period from May 12, 1995 until June 21, 1995.

Summary of Facts and Representations

1. Ventura is a registered bank holding company conducting business in Southern California through its wholly-owned subsidiaries, Ventura County National Bank (VCNB) and Frontier Bank (Frontier; together, the Banks). The principal executive offices of Ventura are located at 500 Esplanade Drive, Oxnard, California.

2. The Employer Stock is registered under Section 12 of the Securities Exchange Act of 1934. The Employer Stock is publicly traded on the National Association of Securities Dealers Automated Quotation National Market System (NASDAQ). The applicant states that the Employer Stock is issued by Ventura, an employer of employees covered by the Plan, and further represents that such stock is a ''qualifying employer security'' under section 407(d)(5) of the Act and section 4975(e)(8) of the Code.[13]

3. The applicant represents that due to declining earnings beginning in 1991, the Banks entered into Formal Agreements with the Office of the Comptroller of the Currency (OCC) in 1992 and 1993 which imposed higher minimum regulatory capital requirements than had previously applied to the Banks. The deadline for reaching this goal was June 30, 1995.

The applicant represents further that new management personnel brought in by Ventura's Board of Directors in September 1993 instituted a plan to restore core profitability to the Banks. Ventura states that these efforts have been largely successful. However, as of May 1995, VCNB had not yet reached the capital ratio required under the Formal Agreement. Therefore, Ventura initiated the Rights Offering as a means to raise capital necessary for VCNB to attain the requisite capital ratio levels and reimburse interest in accordance with the Formal Agreements.

4. The Plan comprises an employee stock ownership plan (the ''ESOP portion'') with a cash or deferred arrangement (the ''401(k) portion''). The trustee of the Plan is Dai-Ichi Kangyo Bank of California (the Trustee). The Trustee is independent of, and does not have any other business relationship with, Ventura and its subsidiaries. The Trustee has investment authority over Plan assets other than participants' individually directed 401(k) accounts in the Plan.

The Plan is an individual account plan as described in section 3(34) of the Act. Participants' individual accounts are divided into subaccounts, which include the following: (i) The Deferred Income Account, which contains a participant's salary deferrals under the 401(k) portion of the Plan; (ii) the Employer Contribution Account, which contains discretionary employer matching contributions that are allocated to the participant's account; (iii) the Employer Stock Account, which contains shares of employer securities allocated to the participant under the ESOP portion of the Plan; and (iv) the Rollover Account, containing distributions from other qualified retirement plans.

As of May 10, 1995, the Plan had 134 participants and total assets of approximately $1,182,254. On such date, the Plan was the record holder of 415,854 shares of the Employer Stock, of which 236,860 shares were allocated to participants' individual accounts, and 178,994 unallocated shares were held in a suspense account under the Plan as collateral for a loan to the Plan.[14]

Investment of Plan assets is different under the 401(k) and ESOP portions of the Plan. The 401(k) portion of the Plan permits each Plan participant to direct the investment of his or her Deferred Income Account, containing participants' salary deferrals, and Employer Contribution Account, which contains discretionary employer matching contributions, by choosing among the different investment funds available under the Section 401(k) portion of the Plan. Participants may also invest a portion of these accounts in shares of the Employer Stock. Participants who have elected to invest a portion of their Deferred Income Account or Employer Contribution Account in shares of the Employer

[13] In the case of an employee benefit plan that is an ''eligible individual account plan'' (as defined under section 407(d)(3) of the Act), section 407(d)(5) of the Act states, in pertinent part, that the term ''qualifying employer security'' means an employer security which is stock. However, the Department is providing no opinion in this proposed exemption as to whether the Employer Stock is a ''qualifying employer security'' under section 407(d)(5) of the Act.

[14] In this regard, the applicant states that there is a loan outstanding between Ventura and the Plan which was made by Ventura to enable the ESOP portion of the Plan to acquire Employer Stock from Ventura (the ESOP Loan). Ventura represents that the ESOP Loan met all of the requirements for a statutory exemption under section 408(b)(3) of the Act. However, the Department is providing no opinion in this proposed exemption as to whether the ESOP Loan met the conditions necessary for exemptive relief under section 408(b)(3) of the Act.

Stock are referred to herein as ''Invested Participants''.

With respect to the ESOP portion of the Plan, the Trustee exercises exclusive investment authority over Plan assets, subject to the requirement that Plan assets be primarily invested in the Employer Stock. In this regard, the applicant states that the Trustee must take into consideration its fiduciary duties to act prudently with respect to Plan investments and to invest Plan assets in the best interests of Plan participants and their beneficiaries.

5. Effective May 12, 1995, Ventura instituted a Rights Offering in connection with the Employer Stock. The Rights Offering called for the issuance to all holders of the Employer Stock as of the close of business on May 10, 1995 (the Record Date) transferable subscription rights (i.e. the Rights) in the ratio of one Right for each 3.17 shares of the Employer Stock held. No fractional rights were issued. The number of Rights issued to each shareholder was rounded up to the nearest whole Right.

Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one share of the Employer Stock at $2.25 per share (the Exercise Price).[15] Each Right also conferred upon its holder a second privilege (the Oversubscription Privilege) allowing each Right holder exercising the Basic Privilege in full to subscribe for an additional number of shares of the Employer Stock (Excess Shares), also at the Exercise Price. Excess Shares were subject to certain availability, proration and reduction restrictions imposed by Ventura. The applicant states that where an insufficient number of Excess Shares was available to satisfy fully all exercises of the Oversubscription Privilege, the available Excess Shares were prorated among shareholders who exercised their Oversubscription Privilege based upon the respective number of shares of the Employer Stock owned as of the Record Date.

The Basic Privilege was freely transferable. The Oversubscription Privilege was not transferable. The Rights were traded on NASDAQ under the symbol ''VCNBR'' through the close of trading on June 20, 1995, the date prior to the expiration of the Rights Offering on June 21, 1995. The proceeds of any Rights that were sold were credited to the accounts of the Invested Participants according to the investments and percentages which had been specified in such accounts.

6. The applicant states that all Invested Participants received by mail: (i) a copy of the Prospectus published by Ventura; (ii) a letter from the Trustee describing the procedures for participant directions with respect to the Rights Offering; and (iii) a direction form (Direction Form). The Direction Forms enabled the Invested Participants to direct the Trustee either to (i) exercise the Rights allocable to their accounts, or (ii) sell such Rights on the open market. The Direction Forms also permitted Invested Participants to elect not to participate in the Rights Offering.

The date that notification of the Rights Offering was mailed to Invested Participants was May 17, 1995 (the Notification Date), which was the same date that such information was received by the other shareholders of record. In addition, Direction Forms necessary to participate in the Rights Offering were provided to Invested Participants on May 18, 1995. A postage paid envelope addressed to the Trustee was provided with each Direction Form. The applicant states that an informational meeting about the Rights Offering was held for employees on May 22, 1995.

Invested Participants had to return the Direction Forms to the Trustee within fourteen (14) days after the Notification Date (i.e. May 31, 1995) because the Trustee needed approximately twenty-one (21) days to process such forms (as noted in Paragraph 8 below). In order for the Rights to be exercised, the Subscription Agent had to receive the Direction Form, together with payment for the shares which were to be purchased, by 5:00 p.m., Pacific Time, on June 21, 1995 (the Expiration Time). Rights not exercised prior to the Expiration Time became worthless.

7. The applicant represents that the Rights Offering was an independent act of Ventura as a corporate entity, under which all holders of the Employer Stock, including the Plan, were treated in a like manner. With respect to the 401(k) portion of the Plan, the Rights were acquired, held and controlled by Invested Participants' individual Plan accounts pursuant to Plan provisions for individually-directed investment of such accounts. With respect to the ESOP portion of the Plan, the Trustee made all decisions regarding whether to exercise or sell Rights allocated to shares of the Employer Stock held in the Plan.

8. For each Invested Participant who directed the Trustee to exercise Rights attributable to his or her Deferred Income or Employer Contribution Accounts in the 401(k) portion of the Plan, the funds which were needed to pay the exercise price were obtained by selling specific investments in the Invested Participant's accounts. The order of withdrawal was made at the direction of the Invested Participant or, if no direction was given, specific investments were sold pro-rata from the funds in the Invested Participant's accounts.

The Plan provided that amounts sold from the investment funds prior to the last day of the Rights Offering were deposited by the Trustee in a special short-term investment account pending the Trustee's payment to the Subscription Agent of the exercise price for the subscribed shares of the Employer Stock. Rights were exercisable by an Invested Participant only to the extent of funds available in his or her accounts in the Plan. If amounts in an Invested Participant's accounts were insufficient to pay the exercise price for all shares of the Employer Stock subscribed for, the Plan provided that the Trustee would sell any Rights not exercised. The proceeds of any Rights that were sold and any income from the special short-term investment account were credited to the accounts of the Invested Participants. In the case of such sale proceeds, credits were made to the accounts of the Invested Participants whose allocable Rights were sold. In the case of such income, credits were made to the accounts of the Invested Participants whose redemption proceeds were deposited in the special short-term investment account. In either case, the credits were made to each account according to the investments and percentages that were currently specified for such account.

The Direction Forms containing the Invested Participants' instructions for the Rights Offering had to be returned to the Trustee within twenty-one (21) working days before the date of the Expiration Time (the Filing Date),[16] in order to give the Trustee sufficient time to perform the administrative procedures required to review participant Direction Forms and implement directions, including the liquidation of other Plan investments. With respect to any Invested Participant who failed to submit a Direction Form to the Trustee by the Filing Date, or submitted an invalid Direction Form, the Plan provided that the Trustee had to sell the Rights on the open market.

[15] The price per share of the Employer Stock, as quoted on NASDAQ, was $2.37 as of the end of the day on May 11, 1995, and was approximately the same price per share at the end of the Offering Period on June 21, 1995.

[16] The Filing Date was June 1, 1995. The Filing Date was supposed to be fourteen (14) days after the Notification Date (i.e. May 17, 1995, as noted in Paragraph 6), but was extended one day because May 31st was the Memorial Day holiday. Thus, Invested Participants had approximately two weeks following notification to provide their instructions to the Trustee.

These possible consequences were disclosed in the information sent to shareholders of the Employer Stock prior to the Rights Offering.

In the event that the market price for the Employer Stock, including the effect of any applicable brokerage commissions and other expenses, at the time the Trustee submitted the Rights for exercise, was less than the exercise price under the Offering, the Plan provided that the Trustee would not automatically attempt to exercise such Rights. In such situations, an Invested Participant was permitted to direct the Trustee to either: (i) use the available funds to purchase shares of the Employer Stock on the open market; or (ii) reinvest the available funds pursuant to the investment elections and percentages specified for the Invested Participant's accounts. In addition, the Trustee could, at the direction of the Invested Participant, either: (i) allow the Rights to expire, or (ii) attempt to sell the Rights on the open market. If the latter option was chosen, the Trustee was required, as directed by the Invested Participant, to either: (i) apply the available funds toward the purchase of shares of the Employer Stock on the open market, or (ii) reinvest the available funds pursuant to the investment elections and percentages specified for the Investment Participant's accounts.

9. With respect to the ESOP portion of the Plan, the Trustee had exclusive authority to exercise or sell the Rights allocable to shares of the Employer Stock held in the ESOP portion of the Plan. The Trustee represents that it's decision to exercise or sell the Rights was made in accordance with the fiduciary duty to act prudently with respect to Plan investments and to invest Plan assets in the best interests of the Plan's participants and beneficiaries.

In this regard, the Trustee decided to sell the Rights allocated to the ESOP portion of the Plan on the open market. The applicant states that the Trustee did not solicit the views of participants with respect to this decision because investment decisions are not generally passed-through under the ESOP portion of the Plan. The proceeds of the sale of the Rights were allocated to each participant's ESOP Employer Stock Account in the Plan in the same ratio as that particular Employer Stock Account bore to all other Employer Stock Accounts in the Plan on the record date.

Prior to making the decision on behalf of the ESOP portion of the Plan to sell the Rights, the Trustee consulted with a financial consulting firm, the Financial Valuation Group (FVG), whose consultants were acquainted with ESOPs and regional banks such as Ventura. The Trustee considered, with the assistance of FVG, a variety of factors that it deemed relevant to whether the Plan should exercise or sell the Rights. These factors included: (a) any transaction and financing costs which may be involved in exercising the Rights; (b) future per share value expectations of market analysts who follow the Employer Stock; (c) the recent trading history of shares of the Employer Stock, and the Rights, and how that trading compared to the trading of similar offerings of comparable financial institutions; (d) the price/earnings ratio of the Employer Stock; (e) a comparison of the Employer Stock's price/earnings ratio and pro forma book value to that of other financial institutions and the relation of such values to the respective market values of those institutions; (f) the current market price of the Employer Stock; and (g) the market price of the Rights.

The Trustee represents that it also considered the investment objectives of the participants in the ESOP portion of the Plan, the risks of each available alternative for the Rights, and the financial resources of the ESOP portion of the Plan. After considering all these factors, the Trustee determined that the sale of the Rights was appropriate for the ESOP portion of the Plan and in the best interests of the affected Plan participants.

10. The Trustee received a total of 131,185 Rights, of which 74,718 represented Rights attributable to allocated shares of Employer Stock in the Plan and 56,467 represented Rights attributable to unallocated shares. The Rights, as listed on NASDAQ, were initially valued at $.156 per Right on May 24, 1995.[17] The Rights were valued at $.125 per Right at the close of the Offering Period. The approximate volume of trading in the Rights during the Rights Offering was as follows: (i) 32,127 Rights were traded between May 10 and May 31, 1995, and (ii) 816,417 Rights were traded between June 1 and June 21, 1995.

All of the Rights received by the Trustee in connection with the Plan's ownership of the Employer Stock in the ESOP portion of the Plan, as well as the Rights received for the 401(k) portion of the Plan which Invested Participants elected to sell rather than exercise (as discussed further below), were sold by the Trustee on the open market. The Rights were sold in two separate transactions on June 13 and June 14, 1995 for $.093 per Right, which was the market price for the Rights on the date of the transactions as quoted on NASDAQ. The Trustee states that the sale of the Rights was executed by an unrelated party.

With respect to the 401(k) portion of the Plan, the applicant states that there were 134 Invested Participants who collectively received a total of 6,989 Rights as a result of the Rights Offering. As noted above in Paragraph 8, Invested Participants who elected to sell their Rights could make such an election up until the Filing Date (i.e. June 1, 1995). For those Invested Participants who elected to sell their Rights, the Trustee sold such Rights (along with the other Rights received by the ESOP portion of the Plan) as part of the two separate transactions on June 13 and 14, 1995. The Rights were sold for $.093 per Right, which was the market price on such dates. In this regard, the Trustee believed that it would be more efficient and fair to all affected Invested Participants in the Plan for the Rights to be sold at about the same time, rather than gradually as the Direction Forms were received. The proceeds from all such sales were allocated to the Plan accounts of those Invested Participants who elected to sell their Rights, in direct proportion to the number of Rights they elected to sell. The applicant states that of the 6,989 Rights received by the Plan on behalf of Invested Participants, a total of 1,024 Rights (with rounding) were exercised, a total of 470 Oversubscription Privileges were exercised, a total of 5,901 Rights were sold, and a total of 64 Rights were allowed to expire.

11. The total number of shares of Employer Stock outstanding prior to the Rights Offering was 6,333,835, of which approximately 415,854 shares, or 6.56 percent, were held by the Plan. The total number of shares of the Employer Stock outstanding after the Rights Offering was 9,226,723, an increase of 2,888,888 shares.[18] Of these additional shares, approximately 1,685,652 were sold to shareholders upon exercise of the Rights, or to investors who purchased the Rights on the open market, and the other 1,203,236 shares were sold to outside investors pursuant to certain standby purchase agreements. The applicant represents that following the Rights Offering, VCNB attained the

[17] In this regard, the applicant states that the Rights were not traded in sufficient volume prior to May 24, 1995 to be listed on NASDAQ.

[18] The applicant notes that the number used to show the increase due to the Rights Offering does not include an additional 4,000 shares which were added to the post-Rights Offering total following the exercise of a stock option by a former employee of VCNB.

capital ratio required under the OCC Formal Agreements.

12. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act because, among other things: (a) the Plan's acquisition of the Rights resulted from an independent act of Ventura, an employer of employees covered by the Plan; (b) with respect to all aspects of the Offering, all holders of the Employer Stock were treated in the same manner, including the Plan; (c) individual participants whose Deferred Income and Employer Contribution Accounts under the 401(k) portion of the Plan held interests in the Employer Stock were responsible for directing the Trustee to exercise or sell Rights under the Rights Offering; and (d) with respect to the ESOP portion of the Plan, investment decisions regarding whether to sell or exercise the Rights received by the Plan were made by a qualified, independent fiduciary acting for the Plan (i.e. the Trustee).

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to all Plan participants within fifteen (15) days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Life Insurance Corporation Retirement Savings Plan (The Plan) Located in Dallas, Texas

[Application No. D–10048]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408 (a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of 16 residential mortgage loans (the Loans) by the Life Insurance Company of the Southwest Holding Corporation Retirement Savings Plan (the Plan) to the Life Insurance Company of the Southwest (the Employer), a party in interest with respect to the Plan, provided the following conditions are satisfied:

(a) The Employer will pay on a Loan by Loan basis as of the date of sale the greater of: (1) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans, or (2) the fair market value of each of the Loans, as determined by a contemporaneous independent appraisal;

(b) The proposed sale will be a one-time cash transaction; and

(c) The Plan will pay no costs or commissions as a result of this transaction.

Summary of the Facts and Representations

1. The Plan, in effect since June 16, 1988, is a profit sharing plan with a 401(k) feature providing for participant directed accounts. The Plan covered 122 employees as of January 1, 1993. As of December 31, 1993, the Plan had $3,945,285 in total assets. The Employer is a privately held Texas Corporation. The Trustee is the Texas Commerce Trust Company, N.A.

2. It is represented that during the 1980's, the Plan Trustees purchased the Loans for the Plan as a part of the Plan's General Investment Fund. It is represented that during the mid 1980's the percentage of Plan assets invested in mortgage loans (calculated based on the outstanding loan balance of the mortgage loan portfolio (Loan Portfolio)) approached 35%. Most of the Loans were purchased at various times from Couch Mortgage, a mortgage banking firm in Houston, Texas. Couch Mortgage is independent of the Plan and Employer. All Loans purchased by the Plan were originated between August 17, 1973 and July 17, 1990, with various original durations and all were secured by first lien positions on residential real properties located in Greater Houston. All the Loans were purchased for their remaining principal balance at the time of the purchase from Couch Mortgage. Eleven of the 16 Loans have fixed rates that range from 10.00% to 16.50%. The remaining five Loans have variable rates that currently range between 7.560% and 10.625%. The borrowers were all independent of the Plan and the Employer.

The Loans which are the subject of this application represent 100% of the Loan Portfolio held by the Plan. As of June 2, 1995, the percentage of the fair market value of the Plan assets invested in the Loans was 8.53%. The Loans are residential real estate mortgage loans and one land only loan.[19]

3. Coopers & Lybrand L.L.P. (Coopers & Lybrand), an independent third party appraiser estimated the fair market value for each of the 16 Loans held in the Loan Portfolio, and the outstanding principal balance, as of March 31, 1995. The methodology used to determine the fair market value of the Loans is more fully discussed in paragraph number 6.

4. The Employer proposes to purchase each of the Loans held in the Loan Portfolio from the Plan for cash. It is represented that the Employer will pay on a Loan by Loan basis as of the date of sale the greater of: (a) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans, or (b) the fair market value of each of the Loans. It is represented that the Employer will compare the principal balance plus accrued but unpaid interest on the loans with the fair market value for each of the Loans. If this amount is higher than the fair market value on the date of the sale, the Employer will pay the higher amount. In the event that the fair market value of each of the Loans is higher than the principal balance plus accrued but unpaid interest, the Employer will pay the fair market value on the date of the sale. In this regard, as of March 31, 1995, seven of the 16 Loans had a fair market value which was less than the outstanding principal balance of the Loan, and nine of the Loans had a fair market value which was greater than the outstanding principal balance of such Loans. Based on calculations as of March 31, 1995, it is estimated that the total amount the Plan will receive as a result of the sale will be approximately $275,939.08.

5. The applicant represents that since 1988 the Plan has sought a buyer for the total Loan Portfolio. Offers received have been deeply discounted from the par value. Potential purchasers considered the package expensive to administer due to the average size of the outstanding loan balance, lack of uniformity in the loan terms (i.e. interest rate, maturity date), and lack of

[19] The Department notes that the decisions of the fiduciaries on behalf of the Plan, in connection with the acquisition and holding of the Loans are governed by the fiduciary responsibility requirements of part 4, Subpart B, of Title I. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, Subpart B, of Title I have been violated regarding the Plan's investment in and subsequent holding of the Loans, and no exemption from such provisions is proposed herein.

original background information from the original loan underwriting.

6. The applicant submitted an appraisal of the fair market value of the Loans (the Appraisal) prepared on March 31, 1995, by Coopers & Lybrand. Coopers & Lybrand is a member of Coopers & Lybrand International, incorporated in Switzerland. It is represented that Coopers & Lybrand has no relationship to the Employer or the Plans and less than 1% of its annual income comes from business derived from the Employer and its affiliates. The value of each of the Loans was appraised using an Income Approach, specifically, the Discounted Free Cash Flow Method. Employing this method, the net cash flow from each of the Loans was forecast over the remaining life of each Loan and discounted to the present value. Monthly principal and interest payments received from each of the Loans were considered to be the Loan's cash flow. For the purpose of determining this cash flow, the following assumptions were made: the next set of payments was assumed to occur on the date of the Appraisal, with the remaining payments made monthly thereafter; rates on the five variable rate loans were assumed constant at their current levels; and payments were assumed to occur on their monthly due date, with no prepayments or late payments. The net cash flow from each of the Loans was then discounted to present value on a monthly basis.

The Market Approach was not utilized, as Coopers & Lybrand was unable to locate institutions who would be desirous of a portfolio with similar characteristics to the Plan's Loan Portfolio. In order to determine the market's interest in this type of loan portfolio, Coopers & Lybrand analyzed an attempt made by the Plan to market the Loan Portfolio. Specifically, Coopers & Lybrand noted correspondence from the Vice President of Institutional Sales for Meridian Capital Markets, the firm which attempted to sell the Loan Portfolio for the Plan. Meridian concluded that the Loans lacked marketability due to various reasons including the Loan Portfolio's small size, varying maturities, cost of servicing, location of the collateral, and the non-uniform nature of the Loans.

Based on the valuation analysis, and the facts and circumstances as of the valuation date, the aggregate fair market value and aggregate outstanding principal balance of the 16 Loans held by the Plan, as of March 31, 1995 was estimated to be $266,483.41 and $267,915.37, respectively.

7. The best offer for purchase of these assets is from the Employer. In this regard, if the Plan had sold the 16 Loans at the aggregate outstanding principal on March 31, 1995, it would have received $267,915.37, based on the Appraisal. If the Plan had sold the 16 Loans at the aggregate fair market value on March 31, 1995, it would have received $266,483.41, based on the Appraisal. However, treating each note as an individual asset and requiring the Employer to pay on a Loan by Loan basis the greater of the fair market value or outstanding principal balance on each Loan, then, as of March 31, 1995, the Plan would have received an additional $8,023.71 when compared to the aggregate principal balance and $267,915.37. When compared to the aggregate fair market value of $266,483,41 the Plan will receive an additional $9,455.67.

8. The Plan's Advisory Committee, which consists entirely of employees and officers of the Employer, desires to offer participants a new selection of nationally known investment funds and other features such as daily valuation and 24-hour a day access to fund balances. However, the Plan cannot do so while the Loans constitute a portion of the General Investment Fund. The General Investment Fund and the other investment options available to participants are presently managed by the Trustees. The applicant represents that of the investment advisors interviewed by the Advisory Committee, no firm would manage the Loan Portfolio without charging the Plan a fee for such services. No investment advisor interviewed could manage the Loans and offer daily valuation, 24-hour access to fund balances, or daily investment changes to the Participants. The Plan as drafted currently would permit valuations as frequently as daily, but because of the existence of the Loans, no nationally known investment advisor of which the Committee is aware, is willing to offer daily valued funds for participant direction. Therefore, the current Trustee-managed funds are valued on a quarterly basis, and permit participant-directed trades only on a quarterly basis. The applicant represents that daily valuations allows the participants to make daily changes to their investment decisions and better react to violative market conditions.

9. The applicant represents that the proposed transaction is in the interest of and protective of the Plan. The applicant represents that by granting the Plan this exemption, the Plan would be receiving at least par value for the Loans which it has not been able to obtain on the open market. The administrative burdens in record keeping for the Plan would be reduced. Plan participants could be offered faster service regarding account balances and options for changing investment choices if they were participating in a Plan whose assets were wholly managed and directed by the Trustee.

10. The applicant maintains that the proposed sale is administratively feasible as the transaction will be a one-time cash sale. The transaction is protective and in the interest of the Plan because the Plan will pay no fees in connection with the sale and the Employer will pay on a Loan by Loan basis as of the date of sale the greater of: (1) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans; or (2) the fair market value of each of the Loans, as determined by a contemporaneous independent appraisal.

11. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Employer will pay on a Loan by Loan basis on the date of sale the greater of: (1) The outstanding principal balance plus any accrued, unpaid interest on each of the Loans; or (2) the fair market value of each of the Loans, as determined by a contemporaneous independent appraisal;

(b) The proposed sale will be a one-time cash transaction; and

(c) The Plan will pay no costs or commissions as a result of this transaction.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Fidelitone, Inc. Employees' Profit Sharing and Savings Plan & Trust (the Plan) Located in Wauconda, Illinois

[Application No. D–10077]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain securities to Fidelitone, Inc. (Fidelitone), a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) the sale is a one-time transaction for cash; (2) the Plan pays no commissions nor any other expenses relating to the sale; and (3) the purchase price is the greater of: (a) the fair market value of the securities as determined by a qualified, independent appraiser, or (b) the Plan's initial capital investment plus opportunity costs attributable to the securities, less cash dividends received.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by Fidelitone. As of March 31, 1995, the Plan had approximately 185 participants and total assets of approximately $2.3 million. The trustee of the Plan is Ronald Comm, Chief Financial Officer of Fidelitone. Fidelitone, an Illinois corporation, is a distributor of electronic repair parts and accessories and is located in Wauconda, Illinois.

2. Among the assets of the Plan are shares in two real estate investment trusts, the Krupp Government Income Trust (Krupp I) and the Krupp Government Income Trust II (Krupp II), both of which invest primarily in insured mortgage obligations. On November 14, 1990, the Plan invested in 5000 Krupp I shares at a cost of $20/share, a total of $100,000. On April 2, 1992, the Plan invested in 4500 Krupp II shares at $20/share, a total of $90,000. The Krupp funds are both close-ended trusts having a fixed number of outstanding shares and no unissued shares. They were both set up to last approximately 10 to 12 years and consequently have seven to eight years remaining. Barring any defaults in the portfolios, the Krupp Co. reports that all remaining capital will be paid to shareholders.

The Krupp Trusts have returned both income and principal to the Plan. A portion of the dividends was used to acquire additional Krupp shares through the dividend reinvestment plan. From November 1990 to November 1993, the Plan purchased 1421.91 Krupp I shares at an average price of $19.11 per share. From April 1992 through November 1993, the Plan purchased 576.34 Krupp II shares at an average price of $19.30 per share. From February 14, 1994 through October 1995, rather than reinvesting the dividends, the Plan has received cash in the aggregate amount of $25,677.28. Specifically, the cumulative cash dividends with respect to the Krupp I shares have been $14,588.24, while the cumulative cash dividends with respect to the Krupp II shares have been $11,089.04

3. The applicant obtained an independent appraisal of the Krupp investments from Mark S. Loftus, First Vice President, Investments, at Dean Witter Reynolds' Rolling Meadows, Illinois office. The letter from Mr. Loftus notes that neither Krupp fund trades on any public exchange.[20] However, each fund's own dividend reinvestment plan buys back shares quarterly using a sealed bid auction method. As of June 1, 1995, the dividend reinvestment plan was repurchasing Krupp I shares at $14.40 per share, and Krupp II shares at $14.90 per share. Mr. Loftus stated that the Krupp Co. also annually computes a net asset value for ERISA purposes by marking securities to comparable Treasury market securities. As of December 31, 1994, Krupp I shares had a net asset value of $15.10 per share, while Krupp II shares had a net asset value of $15.32 per share. Besides the dividend reinvestment plan, Mr. Loftus notes the existence of a few third party companies not affiliated with Dean Witter Reynolds, Inc. nor with the Krupp Co. who attempt to match buyers and sellers on a secondary basis. Prices obtained on such third party transactions are often at substantial discounts to par value and net asset value prices.

The applicant represents that the Plan trustee and Fidelitone have attempted to sell the Krupp shares at the cost paid by the Plan. Mr. Loftus, in his summary of the Plan's transaction history, indicates that Fidelitone attempted on two different occasions in 1994 to sell the Krupp shares using the sealed bid auction method but was unsuccessful because average buy back prices had declined.

4. Because the Plan has been modified to permit the participants to direct the investment of their respective individual accounts among six mutual funds, all Plan assets have been liquidated, with the exception of the Krupp shares. Fidelitone now proposes to purchase all the Krupp shares in the Plan, including those purchased with reinvested dividends, for the greater of: (a) the aggregate fair market value of the Krupp shares as determined by a qualified, independent appraiser, or (b) the Plan's initial capital investment plus opportunity costs attributable to the Krupp shares, less cash dividends received. Because the aggregate fair market value of the Krupp shares is less than the Plan's initial capital investment, Fidelitone will purchase them from the Plan for the latter amount. Accordingly, Fidelitone will pay the Plan a total purchase price of $245,289.72. The purchase price was calculated by taking the Plan's initial capital investment in the Krupp shares (i.e., $190,000) and (i) adding to that amount an assumed 10% annual return for each of the years since the Plan's initial investment in the shares through October 14, 1995 (i.e., $80,967), and (ii) subtracting from that amount the aggregate cash dividends received (i.e., $25,677.28). The sale will be a one-time transaction for cash, and the Plan will pay no commissions nor any other expenses relating to the sale.

The applicant represents that the proposed transaction is in the interests of the Plan because if the Plan is forced to attempt a sale of the Krupp shares on the open market, the Plan will receive substantially less than the amount the applicant is willing to pay. In addition, the sale will enable the Plan to divest itself of illiquid assets that are difficult to value and give participants the opportunity to direct the investment of the total value of their accounts, including that portion attributable to the Krupp shares.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale will be a one-time transaction for cash; (2) the Plan will pay no commissions nor any other expenses relating to the sale; (3) the sale will enhance the liquidity of the assets of the Plan; and (4) the purchase price will be the greater of: (a) the fair market value of the Krupp shares as determined by a qualified, independent appraiser, or (b) the Plan's initial capital investment plus opportunity costs attributable to the Krupp shares, less cash dividends received.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice shall

[20] The Department expresses no opinion herein on whether the acquisition and holding of the Krupp shares by the Plan violated any of the provisions of Part 4 of Title I in the Act.

include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Intrenet Employee Retirement Savings Plan (the Plan) Located in Milford, OH

[Application No. D–10095]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain units of limited partnership interests (the Units) to Intrenet Inc. (Intrenet), a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) the Plan suffers no loss, taking into account all cash distributions received as a result of owning the Units; (c) the Plan pays no commissions nor any other expenses relating to the sale; and (d) the purchase price is the greater of $48,850 or the fair market value of the Units as of the date of the sale as determined by a qualified, independent appraiser.

Summary of Facts and Representations

1. The Plan is a defined contribution, profit sharing plan with approximately 1,821 participants and beneficiaries and total assets of approximately $2,224,567 as of December 31, 1994. The trustee of the Plan is the SBS Trust Company. Intrenet, the Plan sponsor, is a holding company for six truckload carrier subsidiaries providing general and specialized carrier services throughout the United States.

2. Among the assets of the Plan are investments in two limited partnerships, the ML Venture Partners II, L.P. (the Venture Fund) and the ML LEE Acquisition Fund, L.P. (the Acquisition Fund). In April 1987, the Plan purchased 50 Units of the Venture Fund at a cost of $1000 per Unit. In October 1989, the Plan purchased 40 Units of the Acquisition Fund at a cost of $1000 per Unit. The Venture Fund invests primarily in securities of new and developing companies. The Acquisition Fund invests primarily in subordinated debt and preferred stock securities issued in connection with friendly leveraged acquisitions, recapitalizations, and other leveraged financing. The Units are not tradable on any public securities market.[21]

The Units have returned both income and principal to the Plan in the form of cash distributions. With respect to the Venture Fund, the Plan has received cumulative cash distributions of $790 per Unit ($39,500/50 Units), as of October 1995. With respect to the Acquisition Fund, the Plan has received cumulative cash distributions of $950.31 per Unit ($38,012.40/40 Units), as of August 14, 1995.

3. An estimate of the value of the Units is provided to Merrill Lynch by an independent valuation service on an annual basis. The most recent statement, dated May 31, 1995, provided to the Plan by Merrill Lynch, reports a value of $561 per Unit of the Venture Fund ($28,050/50 Units), and $520 per Unit of the Acquisition Fund ($20,800/40 Units), a total of $48,850 for all the Units. The Merrill Lynch statement indicates that these investments are generally illiquid and that investors may not be able to sell them nor realize the amounts shown above upon a sale or liquidation. Thus although there is no readily available market for the Units, the valuation methodology used by the independent valuation service determines the most probable price as of a specified date that the Plan could expect to receive if it sold the Units in an arm's length transaction in a competitive market.

4. In mid-1994, the Plan liquidated all of its assets, with the exception of the Units, and permitted the participants to direct the investment of their respective individual accounts among six mutual funds. In order to enable participants to direct the investment of the total value of their accounts, including that portion attributable to the Units, and to facilitate any required distributions, Intrenet proposes to purchase the Units from the Plan for the greater of $48,850 or the fair market value of the Units as of the date of the sale, as reported in the then most recent Merrill Lynch statement. Taking into account an assumed purchase price of $48,850, the original costs of the Units, and all cash distributions received, the Plan will receive the following rates of return on its original investment in the Units. The applicant represents that the Plan will receive a simple average annual return of 4.13% with respect to the Venture Fund for the period from April 1987 to October 1995, and of 7.84% with respect to the Acquisition Fund for the period from October 1989 to October 1995. The sale will be a one-time transaction for cash, and the Plan will pay no commissions nor any other expenses relating to the sale.

The applicant represents that the proposed transaction is in the interests of the Plan because if the Units are sold to an unrelated third party, the Plan will receive substantially less than the appraised value of the Units, due to their lack of marketability. In addition, the sale will enable the Plan to divest itself of illiquid assets and facilitate any required distributions. Finally, the sale will enhance the diversification of the assets of the Plan by providing participants the opportunity to reinvest the value attributable to the Units in their accounts.

5. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) the sale will be a one-time transaction for cash; (b) the Plan will pay no commissions nor any other expenses relating to the sale; (c) the price paid by the applicant will be the greater of $48,850 or the fair market value of the Units as of the date of the sale as determined by a qualified, independent appraiser; and (d) the sale will enhance the liquidity and diversification of the assets of the Plan.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 10 days of the date of publication of the notice of pendency in the Federal Register. Such notice will include a copy of the notice of proposed exemption as published in the Federal Register and inform interested persons of the right to comment and/or to request a hearing. Comments with respect to the notice of the proposed exemption are due within 40 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[21] The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the Provisions of Part 4 of Title I in the Act.

ContiFinancial Services Corporation (ContiFinancial) Located in New York, New York

[Application No. D–10102]

Proposed Exemption

Section I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.A.(1) or (2). Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[22]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or assets contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[23] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Subsection I.B.(1) or (2).

c. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[24] Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in Section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II. General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in

[22] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[23] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[24] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission (the SEC) under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision of Subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) Such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in Subsection II.A.(6) above.

Section III. Definitions

For purposes of this exemption:

A. ''Certificate'' means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) for which ContiFinancial or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. ''Trust'' means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in Section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in Section III.U);

(e) ''Guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this Section B.(1); [25]

(2) Property which had secured any of the obligations described in Subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in Section B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. ''Underwriter'' means:

(1) ContiFinancial;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ContiFinancial; or

(3) Any member of an underwriting syndicate or selling group of which ContiFinancial or a person described in (2) is a manager or co-manager with respect to the certificates.

D. ''Sponsor'' means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. ''Master Servicer'' means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the master servicer, services assets contained in the trust, but is not a party to the pooling and servicing agreement.

G. ''Servicer'' means any entity which services assets contained in the trust, including the master servicer and any subservicer.

H. ''Trustee'' means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

[25] The Department wishes to take the opportunity to clarify its view that the definition of Trust contained in Section III.B.(1) (a) through (e) includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

I. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. ''Obligor'' means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. ''Restricted Group'' with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. ''Sale'' includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. ''Forward delivery commitment'' means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. ''Reasonable compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c-2.

S. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. ''Pooling and Servicing Agreement'' means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in Section V(h) of Prohibited Transaction Exemption (PTE) 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, at 35932.

Summary of Facts and Representations

1. ContiFinancial is an investment banking firm that specializes in asset securitization, asset-backed financing and the placement of asset-backed securities. The firm serves major regional banking and thrift institutions and national and regionally-based consumer and commercial finance companies. ContiFinancial provides a range of services in all aspects of structuring securitization transactions, as well as arranging for interim lending facilities and credit enhancement alternatives for issuers of asset-backed securities. It is a broker-dealer registered with the National Association of Securities Dealers. ContiFinancial is a wholly owned subsidiary of ContiFinancial Corporation, which is, in turn, owned in excess of 80 percent by Continental Grain Company and the remaining ownership of which will be offered to the public pursuant to a Registration Statement filed with the SEC on October 11, 1995. As of June 30, 1995, the total assets of ContiFinancial Corporation were $482,007,000.[26]

2. ContiFinancial seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following

[26] As described herein, the term ''ContiFinancial'' refers to ContiFinancial Services Corporation and its affiliates unless the context otherwise requires.

categories of trusts:[27] (1) single and multi-family residential or commercial mortgage investment trusts;[28] (2) motor vehicle receivables pool investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[29]

3. Residential and commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground lease pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgage.[30]

Trust Structure

4. Each trust is established under a pooling and servicing agreement or equivalent agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables or certificates which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. Typically, prior to the closing date, the sponsor conveys to the trust legal title to all such assets. In some cases, legal title to some or all of such assets remains with the originator until the closing date. On or prior to the closing date, the sponsor and/or the originator conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. ContiFinancial, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates to be underwritten by ContiFinancial will generally be made on a firm commitment basis. Private placements of certificates may be made on a firm commitment or agency basis. ContiFinancial may also act as the manager or co-manager of an underwriting syndicate or selling group with respect to the certificates.

Certificateholders will be entitled to receive periodic installments of principal and/or interest, or other payments due on the trust assets.

5. Some of the certificates will be multi-class certificates. ContiFinancial requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[31]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying trust assets are distributed first to the class of certificates having the earliest stated maturity of principal and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying trust assets. In neither case will the rights of a plan purchasing certificates be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders will share in the amount distributed on a pro rata basis.[32]

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of trust assets by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations included in trusts which are to be treated as REMICs, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The originator of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or

[27] A given trust may include receivables of the type described below in one or more of the categories of trusts discussed herein.

[28] The Department notes that Prohibited Transaction Exemption (PTE) 83–1 (48 FR 895, January 7, 1983) a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83-l are met. ContiFinancial requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, ContiFinancial has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[29] Guaranteed governmental mortgage pool certificates are mortgage- backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[30] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990) at 23150.

[31] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(l)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[32] If a trust issues subordinate certificates, holders of such subordinate certificates may not share in the amount distributed on a *pro rata* basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor (or sell it directly to a trust).

Originators of receivables included in the trusts will be entities that originate receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust sponsor (other than a sponsor which is also the servicer) are typically limited to acquiring the assets to be included in the trust, establishing the trust, designating the trustee, and assigning the assets to the trust.

9. The trustee of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such, is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to ContiFinancial, the trust sponsor or the servicer. ContiFinancial represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, the sponsor, or out of trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The servicer of a trust administers the trust assets on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be ''subserviced'' by their respective originators and for a single entity to ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

The underwriter will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of certificates. Public offerings of certificates are generally made on a firm commitment basis or agency basis.

It is anticipated that the lead or co-managing underwriter will make a market in certificates offered to the public.

In some cases, the originator and servicer of assets to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to ContiFinancial. However, affiliates of ContiFinancial may originate or service assets included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the assets from various originators or other secondary market participants pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or another secondary market participant pursuant to a purchase or sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables, itself.

As compensation for the assets transferred to the trust, the party (or parties) which conveys legal title to the trust (i.e., the sponsor and/or the originator) receives cash, or certificates representing the entire beneficial interest in the trust. If such party receives certificates from the trust, such party sells some or all of these certificates for cash to investors or securities underwriters. In some transactions, such party or an affiliate may retain a portion of the certificates for its own account.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on assets included in the trust minus a specified servicing fee.[33] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon rate, together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting as sponsor) will retain the difference between payments received on the assets in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases, a portion of the payments on assets in the trust may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the assets between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer, typically, will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid in a lump sum at the time the trust is established, or out of the payments received on the assets in the trust.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession of assets in the trust, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

[33] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

15. Payments on assets in the trust may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on an asset and the certificate payment. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on trust assets are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what the underwriter receives for the certificates and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the assets in a trust is reduced by payment, the cost of administering the trust generally increases in proportion to the unpaid balance of the assets in the trust, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually between 5 and 10 percent) of the initial balance.

The purchase price of the receivables is specified in the pooling and servicing agreement and will be at least equal to either: (a) the unpaid principal balance on the receivables plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (b) the greater of (i) the amount in (a), or (ii) the fair market value of such obligations in the case of a REMIC, or the fair market value of the certificates in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as overcollateralization, surety bonds, letters of credit or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the servicer, or an affiliate of the servicer, may provide credit support to the trust (i.e., act as an insurer). Typically in these cases, the servicer will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be itself) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates. In some transactions, the servicer may not be obligated to advance funds, but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a servicer typically can recover advances either from the provider of credit support or from the future payment stream. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism.

If the servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover defaulted payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights pursuant to the pooling and servicing agreement. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a servicer advances funds, the amount so advanced is recoverable by the servicer out of future payments on assets held by the trust to the extent not covered by credit support. However, where the servicer provides credit support to the trust, there are protections, including those described below, in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on assets are passed through to investors. These protective safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the servicer to follow its normal servicing guidelines and will set forth the servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the assets included in the trust (monthly, quarterly, or semi-annually as set forth in the pooling and servicing agreement), the servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the assets and draws upon the credit support. Further, the servicer is required to deliver to the trustee annually a certificate of an executive officer of the servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the servicer has defaulted under any of its obligations, specifying any such default. The servicer's reports are reviewed at least annually by independent accountants to ensure that the servicer is following its normal servicing standards and that the master servicer's reports conform to the servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect. The protection provided by a floor dollar amount to the credit support applies particularly where the servicer and the insurer are affiliated or are the same entity. (An entity should not be considered an insurer solely because it holds subordinated certificates.)

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the assets contained in the trust, including the types of assets, the diversification of the assets, their principal terms and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through certificates to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificate holders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted assets.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the SEC, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the trustee summarizing information regarding the trust and its assets. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Secondary Market Transactions

24. At times, ContiFinancial will facilitate sales by investors who purchase certificates if ContiFinancial has acted as agent or principal in the original private placement of the certificates and if such investors request ContiFinancial's assistance. Other underwriters have made, and ContiFinancial anticipates that such underwriters will continue to make, a secondary market in publicly-offered certificates sponsored by ContiFinancial.

Summary

25. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute assets contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which ContiFinancial seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) Other underwriters have made, and the applicant anticipates that such underwriters will continue to make a secondary market in the publicly-offered certificates sponsored by the applicant.

Discussion of Proposed Exemption

I. Differences between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1981), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (a) The proposed exemption provides individual exemptive relief rather than class relief; (b) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (c) Instead of requiring a system for insuring the pooled assets, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (d) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[34]

III. Limited Section 406(b) and Section 407(a) Relief for Sales.

ContiFinancial represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[35] In these cases, a direct or indirect sale or certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[36] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, ContiFinancial represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to assets contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. ContiFinancial represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, ContiFinancial represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited section 406(b) and section 407(a) relief as specified in the proposed exemption.

[34] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[35] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which ContiFinancial or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[36] The applicant represents that where a trust sponsor is an affiliate of ContiFinancial, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if ContiFinancial is not a fiduciary with respect to plan assets to be invested in certificates.

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located In Pittsburgh, PA

[Application No. D–10113]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reasons of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of a limited partnership interest (the Interest) in Consolidated Capital Institutional Properties Two Limited Partnership (CCIP/2) to LEGENT Corporation (LEGENT), a party in interest with respect to the Plan.

This proposed transaction is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the CCIP/2 Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the CCIP/2 Interest.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by LEGENT, a publicly-held Pennsylvania corporation engaged in supplying systems management solutions to large users of computer technology. As of September 30, 1994, the Plan had net assets available for benefits that totaled $55,577,555. As of June 30, 1995, the Plan had 2,400 participants.

Prior to September 1, 1993, Mellon Bank (Mellon Bank) served as the Plan trustee. Effective September 1, 1993, Fidelity Investments became the trustee of all of the Plan's assets with the exception of certain limited partnership interests in BPT Union City Associates, Inc. and CCIP/2. Although Mellon Bank continues to serve as Plan trustee with respect to the CCIP/2 Interest,[37] since 1989 the Plan has permitted each participant to direct the investments held in his or her individual account among several funds selected by LEGENT.

2. On July 1, 1977, Morino Inc. (Morino), a Delaware corporation engaged in supplying systems management solutions to users of computer technology, adopted the Morino Associates, Inc. Money Purchase Pension Plan (the Morino Pension Plan) and the Morino Associates, Inc. Profit Sharing Plan (the Morino Profit Sharing Plan; collectively, the Morino Plans). On October 1, 1989, Morino merged with Duquesne Systems, Inc. (Duquesne) and formed LEGENT. Effective October 1, 1989, the Morino Pension Plan merged into the Duquesne Systems, Inc. Pension Plan and the Morino Profit Sharing Plan merged into the Duquesne Systems, Inc. Profit Sharing Plan. The resulting merged plans were amended and restated, effective October 1, 1989, as the LEGENT Corporation Pension Plan and the LEGENT Corporation Savings Plan, respectively. Subsequently, on October 1, 1992, the LEGENT Corporation Savings Plan was amended and restated as the LEGENT Retirement Security Plan (i.e., the Plan) to reflect the merging of the LEGENT Corporation Pension Plan and the Goal Systems International, Inc. Profit Sharing Plan into the LEGENT Corporation Savings Plan due to the merger of Goal Systems International Inc. into LEGENT.

3. As noted above, currently among the assets of the Plan is a 0.02 percent interest in CCIP/2, a South Carolina limited partnership whose underlying assets generate income from leasing space in office buildings primarily in Southfield, Michigan. The CCIP/2 Interest has no maturity date. To the extent known, LEGENT has never invested in CCIP/2. In addition, none of the general partners of CCIP/2 or investors in CCIP/2 are parties in interest with respect to the Plan or its predecessors.

The Morino Pension Plan acquired the CCIP/2 Interest from unrelated parties on March 21, 1984 for a total purchase price of $15,400 (or $110 per unit for 140 units). The acquisition of the CCIP/2 Interest was made at the direction of Morino. Although the Morino Pension Plan (and subsequently the Plan) received income totaling $154 from CCIP/2, no further income payments were made to the Plan after 1991. In addition, the Plan never paid any holding costs in connection with its ownership of the CCIP/2 Interest.

4. When Morino merged with Duquesne, the existing Plan accounts invested in the CCIP/2 Interest were not initially frozen. Because the former Morino Plans did not offer individual participant investment elections, the Plan has held the CCIP/2 Interest as a general asset with a portion of such interest allocated to all participants in the Morino Pension Plan. As these participants terminated their employment with Duquesne, their allocable portion of the CCIP/2 Interest was purchased by the Plan using cash generated from such interest. The remaining portions of the participant accounts that were invested in the CCIP/2 Interest were frozen when Mellon Bank determined that the CCIP/2 Interest had no value and there was insufficient cash to purchase any additional portions from terminating employees. Accordingly, LEGENT froze the remaining accounts invested in the CCIP/2 Interest. As of January 13, 1995, the CCIP/2 Interest was allocated to the accounts of 86 former Morino employees.

5. LEGENT represents that the CCIP/2 Interest is a highly illiquid investment for which there is a very limited secondary market.[38] Mellon Bank represents, in a letter dated November 29, 1993, that it made every effort to sell the CCIP/2 Interest to unrelated parties. However, due to the insufficient secondary market, no purchaser has been found. Accordingly, LEGENT requests an administrative exemption from the Department in order to purchase the CCIP/2 Interest from the Plan.

6. Mellon Bank proposes to sell the CCIP/2 Interest to LEGENT for not less than the greater of (a) the fair market value of the CCIP/2 Interest as

[37] On September 13, 1995, the Department issued Prohibited Transaction Exemption 95–84 at 60 FR 47612. This exemption permitted the cash sale by the Plan of the BPT Interest to LEGENT.

[38] The Department expresses no opinion, in this proposed exemption, on whether Plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring the CCIP/2 Interest.

determined by a qualified, independent appraiser; or (b) the total acquisition cost and opportunity costs attributable to the CCIP/2 Interest. The proposed sale will be a one-time transaction for cash. In addition, the Plan will not be required to pay any fees, commission or expenses in connection with the sale. Mellon Bank represents that it will determine, prior to the sale, whether such transaction is appropriate for the Plan and is in the best interest of the Plan and its participants and beneficiaries.

7. CCIP/2 and its underlying assets were valued by Mr. Brad Davidson, President of Partnership Valuations, Inc. of Annapolis, Maryland. A qualified, independent appraiser, Mr. Davidson values non-traded securities for banks and brokerage firms. As of December 31, 1994, Mr. Davidson determined that the fair market value of each unit in CCIP/2 was worth $45. He also concluded that a 29 percent discount factor was appropriate to his appraisal of CCIP/2 due to its lack of marketability. Therefore, based upon Mr. Davidson's valuation of CCIP/2, the fair market value of the CCIP/2 Interest held by the Plan is $6,300 ($45 x 140 units).

8. Because the fair market value of the CCIP/2 Interest is less than its acquisition cost, LEGENT will purchase the CCIP/2 Interest for the latter amount. In addition, LEGENT represents that because the Plan did not receive an adequate rate of return on the CCIP/2 Interest, it will pay $3,059 to make up for the Plan's lost opportunity costs.[39] Accordingly, LEGENT will purchase the CCIP/2 Interest from the Plan for an aggregate purchase price of $18,459.[40]

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) all terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a sales price which is not less than the greater of (i) the fair market value of the CCIP/2 Interest as determined by a qualified, independent appraiser or (ii) the total acquisition cost plus opportunity costs that are attributable to the CCIP/2 Interest; and (e) Mellon Bank will determine that the sale is an appropriate transaction for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of proposed exemption in the Federal Register. Such notice will include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of November, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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[39] LEGENT represents that the average rates of return for the remaining assets that were held each year by its predecessor Plans is a fair measure of the Plan's lost opportunity costs. Therefore, LEGENT has calculated interest on the amount invested in the CCIP/2 Interest for the Plan Years beginning October 1, 1991 since CCIP/2 paid income to the Plan through the Plan Year ending September 30, 1994. Using this method of calculation, LEGENT represents that the CCIP/2 Interest would have earned aggregate opportunity costs of $3,059.

[40] The applicant represents that the amount by which the purchase price for the CCIP/2 Interest exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the annual additions to such Plan, will not exceed the limitation prescribed by section 415 of the Code.

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 94–3 CARP–CD 90–92]

Distribution of 1990, 1991 and 1992 Cable Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Copyright Office of the Library of Congress is announcing initiation of the 180 day arbitration period for the distribution of 1990–92 cable compulsory license royalties.

EFFECTIVE DATE: December 4, 1995.

ADDRESSES: All hearings and meetings for the 1990–92 cable distribution